SUPREME COURT OF THE UNITED STATES.

No. ~~196.~~ 83.

THE MARINE BANK OF CHICAGO, PLAINTIFF IN ERROR,

vs.

DUDLEY C. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 196.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court for said district, and on Saturday, the fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-sixth year.

WM. H. BRADLEY, *Clerk.*

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. } Assumpsit.

Be it remembered that on the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-one, said
2 plaintiff, by Sandford B. Perry, his attorney, came into the office of the clerk of the circuit court of the United States for the northern district of Illinois, and filed his precipe bond for costs, and declaration, all of which read in the words and figures following, to wit:

Precipe.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, 1861.

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. }

The clerk of said court will issue a summons in the above cause directed to the marshal of said district, in a plea of trespass on the case on promises returnable at the December term of said court, A. D. 1861, to the damage of the plaintiff of ten thousand dollars.

SANDFORD B. PERRY,
Plaintiff's Attorney.

3 To WM. H. BRADLEY, Esq., *Clerk.*

CHICAGO, 4 *Dec.*, 1861.

Endorsed: Filed this 4th day of Dec., 1861.
WM. H. BRADLEY, *Clerk.*

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1861.

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. } In assumpsit.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to

any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

4 Dated this 4th day of December, A. D. 1861.

S. B. PERRY.

Endorsed: Filed Dec. 4th, A. D. 1861.

WM. H. BRADLEY, *Cl'k.*

Declaration.

UNITED STATES OF AMERICA:

Circuit court United States for the 7th circuit and northern district of Illinois, of the December term, 1861.

Dudley C. Hall, who is a resident in and a citizen of the State of Massachusetts, plaintiff in this suit, by Sandford B. Perry, his attorney, comes and complains of the Marine Bank of Chicago, a citizen of the State of Illinois, and a corporation existing under and by virtue of the laws of the State of Illinois, and doing business at Chicago, in the district aforesaid, defendant in this suit, who is summoned, &c., to answer to the plaintiff of a plea of trespass on the case on promises.

5 For that whereas the said defendant heretofore, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-one, at Chicago, to wit, at the district aforesaid, was indebted to the said plaintiff in the sum of ten thousand dollars of lawful money of the United States of America for diverse goods, wares, and merchandize, by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered

6 to the said defendant diverse other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay unto the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested. And the said plaintiff aver that the said goods, wares, and merchandize l st mentioned at the time of the sale and delivery thereof were

reasonably worth the further sum of ten thousand dollars of like lawful money aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of ten thousand dollars of like lawful money as aforesaid,
7 for money before that time lent and advanced by the *by the* said plaintiff to the said defendant, and at the like request of said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and also in the further sum of ten thousand dollars, for so much money before that time and then due and payable from the said defendant to the said plaintiff for interest upon and for the forbearance of diverse large sums of money before then due and owing from the said defendant to the said plaintiff, and by the said plaintiff foreborne to the said defendant for diverse long spaces of time, before then elapsed, at the like special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff
8 the said several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning diverse other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid. And upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested,
9 etc.,) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of ten thousand dollars. And therefore the said plaintiff brings suit, etc.

SANFORD B. PERRY,
Pl'ff's Att'y.

Memorandum of account sued on.

1861.

March 19.—To cash had and rec'd by the Marine Bank of Chicago for the use of Dudley C. Hall	$6,945	95
" To cash p'd the Marine Bank of Chicago by Mess. Goodwin & Davis, for the use of Dudley C. Hall	6,945	95

The Marine Bank of Chicago to Dudley C. Hall, Dr.

To money lent and advanced	$10,000	00
To money had and received to and for use of s'd Hall	10,000	00
To interest on and forbearance of divers sums of money	10,000	00
To balance due on account stated	10,000	00

10 Endorsed: Filed Dec. 4, 1861.

WM. H. BRADLEY, *Cl'k.*

And thereupon, on the same day, to wit, the day and year last aforesaid, the following summons issued, in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon the Marine Bank of Chicago, if it shall be found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto Dudley C. Hall, in a plea of trespass on the case on promises, to his damage, as he alleges, of ten thousand
11 dollars. And have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 4th day of December, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the 86th year.

[L. S.]

WM. H. BRADLEY, *Clerk.*

Marshal's return.

I have executed the within writ this 4th day of December, A. D. 1861, by handing a copy of the same to J. Young Scammon, president

of the within-named Marine Bank of Chicago, who examined the same and accepted service.

J. R. JONES,
U. S. Marshal Nor. Dist. of Illinois.

Endorsed: Filed Dec. 4th, 1861.

WM. H. BRADLEY, *Clerk.*

12 And afterwards, to wit, on the eighteenth day of December, in the year last aforesaid, the said defendant, by its attorneys, come and file the following plea, to wit:

Defendant's plea.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Circuit court of the December term, A. D. 1861.

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. } Assumpsit.

And now comes the said defendant, by McCagg and Fuller, its attorneys, and defends the wrong and injury, when, &c., and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, &c.

McCAGG & FULLER,
Def't's Att'ys.

Endorsed: Filed Dec. 18, 1861.

WM. H. BRADLEY, *Cl'k.*

13 And afterwards, to wit, on the third day of February, in the year A. D. 1862, in the record of the proceedings of said court in said cause is the following entry, to wit:

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined come a jury of good and lawful men, to wit: R. S. Robinson, O. H. Hoge, Thomas Webster, Calvin Barnes, J. D. Brown, J. W. Sanford, A. B. F. Chesney, C. S. Marshall, Henry Rousch, A. H. Heald, John Wilson, and Samuel P. Smith, who are all duly elected, tried and sworn to well and truly try the issue in this behalf. After hearing the evidence and a part of the argument of counsel, the hour of adjournment having arrived, the further argument is postponed until to-morrow morning.

And afterwards, to wit, on the fourth day of February, in the

year last aforesaid, in the record of the proceedings of said court in said cause is the following entry, to wit:

14 DUDLEY C. HALL
v.
THE MARINE BANK OF CHICAGO. } Assumpsit.

Now come again the parties, by their attorneys, and come also the jury in this behalf, empannelled and sworn. And after hearing the conclusion of the evidence of counsel and the instructions of the court, retire to consult on their verdict; and after a short absence return into court the following verdict: "We, the jury, find the issue for the plaintiff, and assess the damages at the sum of six thousand five hundred and ninety-four dollars and forty-eight cents. And thereupon the defendant moves the court to set aside the finding of the jury in this behalf and grant a new trial.

And afterwards, to wit, on the fifteenth day of February, in the year last aforesaid, in the record of the proceedings of said court in said cause is the following entry, to wit:

DUDLEY C. HALL
v.
MARINE BANK OF CHICAGO. } Assumpsit.

15 The court having considered, and being now fully advised, on the motion of the defendant for a new trial, overrules the same, and awards judgment on the finding of the jury in this behalf.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of six thousand five hundred and ninety-four dollars and forty-eight cents, the damages so as aforesaid assessed by the jury in this behalf, together with the costs and charges herein, amounting to the sum of forty-four dollars and forty-five cents, and that execution issue therefor.

And afterwards, to wit, on the fifteenth day of February, in the year last aforesaid, the defendants, by their attorneys, come and file the following bill of exceptions, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois:

In circuit court, term A. D. 1862.

16 DUDLEY C. HALL
v.
THE MARINE BANK OF CHICAGO. } Assumpsit.

Be it remembered that on the trial of the above-entitled cause, at the term of said court, to wit, on the third day of February, A. D. 1862, the plaintiff, to prove the issues on his part, introduced a letter written by Goodwin & Davis to the defendant of the date of 16th March, 1861, which was read to the jury as follows, to wit:

QUINCY, *March* 16*th*, 1861.

Cashier of Marine Bank, Chicago:

D'R SIR: Enclosed we hand you Drexel & Co. draft for $3,150, to order of C. Brown, jr., and by him endorsed, as also by Moore, Thomas & Co., and ourselves. Also draft of W. S. Penfield, cashier Quincy Savings, &c., to order of Moore, Sherman & Co., for $2,000, indorsed by them and us. Also draft of Moore, Sherman & Co., to our order, and by us indorsed, for 657\frac{35}{100}$. Also current bank notes for
am't of $1,140. Total am't, $6,947 35. You will please pass
17 this latter sum to the credit of Dudley C. Hall, of Medford, Massachusetts, and forward to him a certificate of deposite therefor at that place. Please also inform us of the receipt hereof, and oblige,

Yours, truly,

GOODWIN & DAVIS,
Att'y for Dudley C. Hall.

Also a letter of the same parties to the defendant, of the same date, which was read to the jury, as follows, to wit:

QUINCY, *March* 16*th*, 1861.

Cash. Marine Bank of Chicago, Ill.:

D'R SIR: We have just remitted to your bank draft and currency to amount of $6,947$\frac{35}{100}$, to order of Dudley C. Hall, esq., of Medford, Mass. We omitted to request you to pay express fees and deduct from amount of certificate to him. Please do this and remit certificate of deposite to address of Dudley C. Hall, Medford, Mass., and oblige,

Yours, &c.,

GOODWIN & DAVIS,
Att's for Hall.

18 Also a letter from the defendant to Goodwin & Davis, of the date of 19th March, 1861, which was read to the jury, as follows, to wit:

MARINE BANK OF CHICAGO,
Chicago, Ill., M'ch 19, 1861.

Mess. GOODWIN & DAVIS, *Quincy:*

DEAR SIR: Yours of 16th is at hand. I have this day sent Dudley C. Hall, Medford, Mass., our cert. dep. $6,945 95, as requested, being the am't of your remittance less $1 40 exch. ch'g's.

Yours, truly,

H. B. DOX, *Cash.*
ROBERTS.

Also a letter from the defendant to the plaintiff, of the date of 19th March, 1861, which was read to the jury, as follows, to wit:

MARINE BANK OF CHICAGO,
Chicago, Illinois, M'ch 19, 1861.

DUDLEY C. HALL, Esq., *Medford, Mass.*:

19 DEAR SIR: I hand you herewith my c'd. $6,945 95, being by request of Goodwin & Davis, Quincy.

Respectfully,

SAM'L S. ROGERS, *A. Cashier.*

Exchange 6 per cent.

Also a letter from the plaintiff to the defendant, of the date of 21st March, 1861, which was read to the jury, as follows, to wit:

MEDFORD, MASS., *March* 21, '61.

HAMILTON B. DOX, Esq., *Cash'r Marine Bank, Chicago:*

D. SIR: On the 11th I received a letter from Mess. Goodwin & Davis, Quincy, Ill's, that they had collected for me $6,947 35, and had deposited with Mess. Moore, Sherman & Co., to wait my advice. I wrote them to send it to your bank to be deposited to my cr. You will greatly oblige me if you will let me know if the same was received; if it was, please send me a certificate of deposit for the am't.

Very respectfully,

DUDLEY C. HALL.

P. S.—Please quote ex. on N. Y. or Boston.

20 Also a letter from the plaintiff to the defendant, of the date of 2d April, 1861, which was read to the jury, as follows, to wit:

MEDFORD, *Ap'l 2d*, '61.

HAMILTON B. DOX, *Cash'r Marine Bank, Chicago:*

D. SIR: You have to my credit at your bank $2,537 42, received March 1st, from Dubuque; $6,945 95, rec'd from Quincy, Ill's. You will greatly oblige me if you will send me the rate for exchange you should charge to remit the above am'ts to me in exch'g. on N. Y. or Boston, and please give me your opinion as to future rate for exch'g.

Very resp.,

DUDLEY C. HALL.

Also a letter from the defendant to the plaintiff, of the date of 5th April, 1861, which was read to the jury, as follows, to wit:

THE MARINE BANK OF CHICAGO,
CHICAGO MARINE AND FIRE INSURANCE COMPANY,
Chicago, Ill's, Ap'l 5, 1861.

DUDLEY C. HALL, Esq., *Medford, Mass.:*

DEAR SIR: Your favor of 2d inst. is received. I find
21 at your credit $2,537 42, and we have issued a certificate of deposite in your favor for $6,945 95, which of course must be

returned to be remitted. We can remit now at 4 per cent. on New York or Boston, and in ordinary times should look for a decline as the opening of spring business approaches, but we have been repeatedly disappointed of late by unexpected events, and now seldom venture an opinion. Will take your directions in circumstances that may arise.

Yours, resp'f.,

SAM. S. ROGERS, *A. C.*

Also a letter from the plaintiff to the defendant, of the date of 9th April, 1861, which was read to the jury, as follows, to wit:

MEDFORD, *Mass.*, *April 9th*, 1861.

SAM'L S. ROGERS, Esq.,
Cash'r Marine Bank, Chicago:

D'R SIR. Yours of the 5th. quoting rate of exchange, and remarks in reference to the same is at hand. Enclosed I hand you certificate of deposit at your bank to my cr'd. for $6,945 95 and
22 $2,537 42. If it was not for our political troubles, should feel sure that exchange would be lower; but as things are, I don't know what to think. If, upon receipt of this, you can remit me the proceeds of the with. certificates, at about 4 per cent. for exchange, please do so by your check on New York or Boston.

Very respectfully,

DUDLEY C. HALL.

P. S.—I hope, on receipt of this, exch'g. will have declined, so that you can remit at about 3 per cent., or less.

Also a telegram from the plaintiff to the defendant, of the date of 12th April, 1861, which was read to the jury, as follows, to wit:

TO CASHIER MARINE B'K:

BY TELEGRAPH FROM BOSTON, 12 *Ap'l*, 1861.

Don't remit at over four (4) per cent.

DUDLEY C. HALL.

Also a letter from the defendant to the plaintiff, of the date of 12th April, 1861, which was read to the jury, as follows, to wit:

23 MARINE BANK OF CHICAGO,
Chicago, Illinois, April 12, 1861.

DUDLEY C. HALL, Esq., *Medford, Mass.:*

Your favor of the 9th inst. is rec'd, enclosing our certificate deposite, $6,945 95. and a letter of advice, $2,537 42, which I return to you herewith, exchange having advanced from 4 to 7 per ct. We must, under your instructions, await a more favorable turn of events. Your telegram of to-day is also received.

Yours truly,

SAM'L S. ROGERS, *A. C.*

By consent of defendant's counsel the plaintiff read in evidence all the above-named letters and telegram addressed to defendants and in its possession, in order that said correspondence should go to the jury in chronological order.

The plaintiff then offered in evidence a deposition of one John Brooks Fenno, taken in this cause, to the reading of which the defendant then and there objected; but the defendant's counsel
24 saying that they should claim that the receipt and retention of the certificate of the Marine and Fire Insurance Company made that company responsible and discharged the defendant, the court admitted the evidence as explanatory of the reason why the plaintiff did not object to the form of the certificate, and the court overruled said objection, and the defendant to the said ruling of the court excepts and prays that his said exception may be allowed and entered of record, which is done. And thereupon said deposition was read by the plaintiff to the jury, as follows, to wit:

The said John Brooks Fenno, being first duly sworn by me, Andrew J. Brown, a notary public, as a witness in said cause previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matter in controversy, so far as he should be interrogated, testified and deposed as follows:

First interrogatory. State your name and residence.

25 Answer. John Brooks Fenno; Boston, Massachusetts.

Second int. Did you ever have any business transaction with the defendant's bank? and if yea, state when and what they were, and what was said to you, if anything, by any officer of the bank in relation thereto.

Ans. I have had a number of transactions with the bank at different times. I formerly kept an account with Geo. Smith & Co., and when they wound up I asked Mr. Willard what was the best bank to keep an account with, and he recommended me to the Marine Bank, saying he thought that was the safest institution; after which I directed my correspondents to remit to the Marine Bank any sums they might be owing me to be passed to my credit. The first interview I had with the bank was last February, in 1861. On the 18th day of February, 1861, I called at the bank and told the bookeeper I wanted to open an account there, and that I had ordered certain parties
26 already to remit funds to be passed to my credit; that I wished to leave my name, for I should want to be drawing checks; that I wanted to take out a bank book with an entry of any amounts that might be standing to my credit. He accordingly took a bank book and entered whatever amount I had standing to my credit. He passed the book over to me. Upon looking at the book I found it lettered Chicago Marine and Fire Insurance Company in account with J. Brooks Fenno. I told him I wanted to open an account with the Marine Bank, and asked him what it meant to have the book headed in this way, and that I knew nothing about the insurance company. He replied that they were one and the same thing, and that all their bank books were made out in that manner.

I then went to the teller and asked him for some blank checks on the Marine Bank which I could use in drawing deposits. He gave me a small book of blank checks, which were also headed Chicago Marine and Fire Insurance Co. I told him my account was opened with the Marine Bank, and asked him if he did not have blank checks
27 on the Marine Bank. He said he did not, and that money was always drawn from the Marine Bank on those checks. I used some of those checks given to me and withdrew some of the funds I had at the bank.

Third int. Look at the paper now shown to you, marked "Exhibit 'A,' A. J. Brown, No.," and state whether you ever saw it before, and when for the first time, and in whose hands was it.

Answer. Yes, I have seen this paper before, in the hands of the plaintiff in this suit, some time about the last of March or the first of April, 1861. I returned from the west the 16th of March, 1861, and I think it was not a great while after that.

Fourth interrogatory. State if you had any conversation with the plaintiff about this paper, and if yea, what it was.

(Objected to by defend'ts counsel.)

Answer. I did have some conversation with Mr. Hall about
28 this piece of paper. By my advice and recommendation, Mr. Hall had opened an account with the Marine Bank, and I had made a deposit there myself for Mr. Hall, and through my advice he had written to his correspondents to remit funds to that bank. I told him what Mr. Willard had told me about the bank, and when he received this certificate of deposit, marked exhibit "A," he observed that it was headed Chicago Marine and Fire Insurance Company. He brought it to me and asked what it meant. I related to him what took place with me and the officers of the bank, as I have before stated it. He said he had ordered this money to be sent to the Marine Bank, and he knew nothing of any insurance company. I told him they were one and the same thing and he need give himself no uneasiness about it.

Fifth interrogatory. State whether you had any conversation with the plaintiff about the paper marked Exhibit "A," and whether you said anything to him in consequence of, or in reply to, any-
29 thing the plaintiff said to you. If yea, what?

(Objected to by def'ts counsel.)

Answer. I did have a conversation with Mr. Hall about this paper, and, in reply to what he said to me, I said to him that the Chicago Marine & Fire Insurance Company and the Marine Bank were one and the same institution; that the officers of the bank had assured me of this fact, that he need give himself no uneasiness because this certificate of deposit, marked Exhibit "A," was headed Chicago Marine & Fire Insurance Company, altho' it was for funds sent by his correspondents to the Marine Bank.

Sixth int. Please state whether or not the plaintiff ever applied to you for blank checks on the defendant's bank, if yea, what did you say and do, and what did the plaintiff do, and about when was it?

(Objected to by def'ts counsel.)

vant, improper, and relating to conversations with which the defendant had nothing to do, neither by way of participation, notice, nor being present, but the court overruled the objections, and the defendant again excepted to said ruling and prayed that his said exception be allowed and entered of record, which is done.

The plaintiff then offered in evidence, by consent of the defendant, a paper, of which the following is a copy, to wit:

To the MARINE BANK OF CHICAGO:

Mr. D. D. Driscoll, of Chicago, is hereby authorized to receive from you the amount of money deposited with, or paid to you, 19th March, 1861, by Mess. Goodwin & Davis for my use, and to receipt for the same. Please pay the same to said Driscoll, and his receipt,
37 as my agent or attorney, shall be binding on,

Yours truly,

DUDLEY C. HALL.

MEDFORD, MASS., *Nov.* 22, 1861.

The plaintiff also offered in evidence, in the same connection, and by like consent, the statement of Mr. D. D. Driscoll as to what he did under said authority, conferred on him as above, which is as follows, to wit:

On the third day of December, A. D. 1861, I went, as the agent and attorney of Dudley C. Hall, under and by virtue of his written authority to me, dated 22d Nov., 1861, to the banking-house of the Marine Bank of Chicago, and there requested J. Young Scammon, the president of said bank, to pay me, as such agent and attorney, the money referred to in said writing, at the same time showing the same to him. I also at the same time offered to surrender to him a certificate of deposite, numbered 10,512, purporting to be issued to Dudley C. Hall by the Chicago Marine and Fire Insurance Company for $6,945 95, payable to the order of said Hall, and by him
38 endorsed in blank. Mr. Scammon, president as aforesaid, declined to pay the said money.

DANIEL D. DRISCOLL.

The plaintiff then produced and offered to surrender said certificate of deposite, No. 10,512, to the defendant, and deliver the same up to the clerk of this court, to be cancelled; and said clerk made the following endorsement thereon, to wit: "Delivered up to the pl'ff on the trial, to be cancelled. Feb. 3, 1862. W. H. Bradley, Clerk," and then placed the same with the files in this cause, for the use of the defendants.

The said certificate is in the words and figures following, to wit:

No. 10,512. STATE OF ILLINOIS,

CHICAGO MARINE AND FIRE INSURANCE CO.,

Chicago, March 19, 1861.

Dudley C. Hall, esq., has deposited in this office sixty-nine hundred

and forty-five and $\frac{95}{100}$ dollars, Ill's currency, payable, in like funds, to his order, on return of this certificate.

H. G. LOOMIS, *A. V. P.*

$6,945 95. Registered.
EUGENE C. LONG. SAM'L S. ROGERS, *A. S.*

39 Endorsed: DUDLEY C. HALL.

Delivered up by the pl'ff on the trial, to be cancelled.
FEB. 3, 1862. W. H. BRADLEY, *Clerk.*

Here the plaintiff rested his case.

The defendant then introduced the act of the general assembly of the State of Illinois incorporating the institution known as the "Chicago Marine and Fire Insurance Company," passed in the year 1836.

It was admitted without proof that the institution known as the "Marine Bank of Chicago," the defendant herein, is a corporation duly and properly established and created under the general banking laws of the State of Illinois, and that the same was so organized in the year 1852.

The defendant then introduced as a witness one William B. Hibbard, who testified and said that he was and had been a bookkeeper of the defendant since 1857; that the defendant kept separate
40 books and accounts from the Chicago Marine and Fire Insurance Company; that the defendant did no general banking business; that it issued no certificates of deposite, except by special agreement; that it kept no deposite accounts, except with the board of sewerage commissioners of Chicago, the United States circuit and district courts, the Park and Metropolitan banks of New York, and the Wisconsin State Bank of Milwaukee; that it did a collection and exchange business; that it refused all other business; that the defendant corporation had for its officers a president, vice-president, cashier, and assistant cashier; that J. Young Scammon was president, Hugh T. Dickey vice-president, Hamilton B. Dox cashier, and Samuel S. Rogers assistant cashier; that the Chicago Marine and Fire Insurance Company had for its officers a president, vice-president, secretary, and assistant secretary; that of this institution said Scammon was president, said Dickey vice-president, said Dox secretary, and said Rogers assistant secretary; that this defendant and said Chicago Marine and Fire Insurance Company did business at the same
41 building or place in Chicago, and in the same banking rooms.

The defendant then introduced as a witness one Hamilton B. Dox, who testified and said that he was, and since November, 1860, had been cashier of the defendant, and secretary of the Marine and Fire Insurance Company; that they are two distinct institutions; that the defendant issued a circulation to a limited extent and did an exchange and collection business; that it kept a deposite account with the

United States circuit and district courts, the sewerage commissioners of Chicago, the State Bank of Wisconsin, and kept an account for eastern exchange with the Park and Metropolitan Banks at New York city; that the arrangements were made with these parties by the officers of the defendant before I became an officer; that the defendant was not in the habit of giving certificates of deposite; that I know of only one, issued to the officers of this court, and two others for small amounts, issued by some officer of the defendant inad-
42 vertently and by mistake; that no officer of the defendant had authority to issue such certificates; that the accounts of depositors in the city of Chicago were kept with the insurance company; that collections were sent to the defendant, but the insurance company did the business; that the correspondence was carried on in the name of the defendant, and so far as eastern parties were concerned I presume they knew nothing about the insurance company; that eastern parties generally addressed the defendant; that our eastern correspondents were banks, brokers, and merchants, who were in the habit of sending us their paper for collection; that the defendant had no business except the accounts already mentioned; that the two institutions were distinct, and kept separate sets of books and accounts; that since 1857 the stockholders in said two institutions have been the same persons, each person holding the same amount of stock in one institution that he did in the other; that before 1857 it was different; that the defendant was organized as a corporation in 1852, and has had but one employee besides its officers, a
43 bookkeeper; that the funds of the two institutions were kept separate, they had separate safes and separate sets of books, all in the same building and banking rooms; that circulars were issued in defendant's name and sent to eastern correspondents, and in the name of the insurance company, and sent to western correspondents; that four sets of circulars were sent by the defendants, and the same number by the insurance company; that on the 19th day of March, A. D. 1861, the price of exchange at Chicago on New York was six per cent. in the then Illinois currency, and gold was worth one-fourth per cent. more; that I have not figured on the value of Illinois currency on the 3d day of December, A. D. 1861, but I estimate it at 70 cents, that is, exchange on New York was then worth a premium of thirty per cent. in Illinois currency, while gold was always one-fourth per cent. higher than exchange in the same currency. I have been engaged in the banking business at Chicago, Illinois, for the last six years. I know the plaintiff, and was cashier of the defendant at the time the collection sued for in this case was
44 made. I know what was the circulating medium at Chicago during the fall of 1860, and the winter and spring of 1861, and what was the meaning of the word currency, as used during the last five or six years at Chicago and vicinity.

The word "currency" meant the bills of the free banks of Illinois and Wisconsin, and which were always distinguished from coin and from the bills of other States than Illinois and Wisconsin. In the fall of 1860, and until April, 1861, the "currency" in use for all business

transactions at Chicago and vicinity, was the bills of the free banks of Illinois and Wisconsin. After the first of April, 1861, and until May 18, 1861, the currency was wholly composed of the issues of the free banks of Illinois. As compared with coin or exchange on New York, this currency was always a depreciated currency. It was of fluctuating and uncertain value. Soon after the election in November, 1860, it began to depreciate in value. In November and
45 December, 1860, it was from 5 to 10 per cent. discount for coin. The bills of the different banks differed greatly in value at the same time. Their values depended upon the New York market value of the stocks deposited for the security of the bills. In November, 1860, the bills of nine of the Illinois banks became so much depreciated in value that they were thrown out, or rejected, by the banks and the community, and ceased to be used as currency. After this the remaining bills that were used as currency fluctuated in value from 5 to 10 per cent. discount for coin until the first of April, 1861, when thirty more of the bills of Illinois banks were thrown out or rejected, and no longer used as currency. After April 1, 1861, there were about $6,500,000 of the bills of Illinois banks in circulation, which was the sole circulating medium until May 18, 1861, when this currency had depreciated so much that it was no longer used as money. It had then depreciated from 10 to nearly 50 per cent. from coin. Some of the banks were then but little depreciated. The bills of the
46 Marine Bank, The Bank of Galena, Bank of Ottawa, and two or three others were on the 18th of May, 1861, not so much depreciated, and were worth 90 cents to par. But these banks had only a very small circulation, say from $60 to $70,000, out of an entire circulation of nearly $6,500,000, and the bills of these banks had not, for nearly a year before, formed any appreciable part of the circulation in use as money. During all the time I have been in banking business at Chicago there has been a distinction and difference noted between this currency and other kinds of money. When a customer or depositor made a deposit with a bank, this currency was entered as such in his bank book, and coin entered as such, and eastern funds as such, and the depositor drew it out as he paid it in, receiving gold for gold and currency for currency, unless, as was often the case, he was allowed a premium for his gold or eastern funds in currency, when he would draw out the whole in currency. The currency, when
47 deposited, was drawn out in like currency, unless gold or exchange on New York was specially called for, when the customer was charged the difference in value at the time between currency and gold or exchange, which fluctuated from time to time. This currency declined in value during the winter and spring of 1861. During all that time it was used in payment of debts, and in all transactions of domestic business as money. We had hardly any other. The collections made by defendant for plaintiff were all made in this currency, or in checks upon banks payable in this currency. We made all our collections for other parties, whether banks or private individuals, in this currency, unless specially directed

otherwise; and when we remitted to our eastern correspondents the proceeds of such collections we charged them discount, or difference between this currency and New York exchange, which varied from time to time. New York exchange was always worth about ¼ or ½ of one per cent. less than coin. The funds of the bank were all kept together, including its own, those received on deposit,
48 and for collections. All went into one fund. This fund was made up of this Illinois currency. It is usual and customary for banks and bankers to keep all their funds together. The defendant put the funds received on collections for plaintiff with its own funds in the usual way. The currency which was received in payment of the collections made by defendant for plaintiff was worth 94 cents on the dollar at the time it was received by defendant. It continued to depreciate in value until May 18, 1861, as did all the funds held by defendant with which plaintiffs were mixed. After that date it was no longer used as money, but was bought and sold as a commodity, by the brokers, at from 10 to 55 per cent. discount. At the time of the demand for payment made by plaintiff in this case, this currency was worth about 70 cents on the dollar. By this is meant that the average value of the bills which had been used as currency or money, and in which plaintiff's collections had been made during the winter and spring of 1861, and until May 18,
49 1861. Nearly all these bills were secured by the bonds of the southern or seceded States; they had no other security than these bonds except what might be got from the stockholders of the banks after the stocks were sold in New York under the banking law of Illinois, which liability of stockholders was not regarded in estimating the market value of the bills issued by the banks.

The word "currency" as used in this place meant such bank bills as passed current in community for business purposes, and which were used as money, but did not include the bills of banks of any States except Illinois and Wisconsin. The bills of all other banks than of those States were worth more than those of Illinois and Wisconsin, and always brought a premium over those. There were hardly any bills of other States in circulation in the winter and spring of 1861.

Cross-examination of H. B. Dox.

The letter of 19th March, 1861, shown me and signed "H.
50 B. Dox, Cash'r Roberts," is my letter as cashier of the defendant, and the three letters signed "Sam. S. Rogers, A. C.," or "A Cashier," are the letters of Samuel S. Rogers, assistant cashier of the defendant. There have been no checks issued on the defendant since I have been there. There were checks occasionally drawn on the defendant. If a check on the defendant should be presented to the teller of the insurance company, it would be paid by such teller. The defendant had no teller.

To a question by the court, the witness says: Eastern business was done in the name of the Marine Bank, the defendant. A dividend was declared by the defendant in February, 1861, of four per cent. It was founded on the exchange business.

The plaintiff's counsel then showed the witness a letter with a printed heading, "Marine Bank of Chicago," and the witness says this was the usual form of the heading of the defendant's letters.

This was all the testimony given in the case.

51 The court then charged the jury substantially as follows:

The jury are instructed not to consider the deposition of J. Brooks Fenno, read in this cause, as evidence to establish the claim made by the plaintiff against the defendant.

The only evidence to that point produced by the plaintiff is the correspondence of the parties read to you.

It would seem from the evidence that the defendant, when it received the money referred to in the correspondence from Goodwin and Davis, the plaintiff's agents or attorneys, at Quincy, sent to the plaintiff a certificate of deposite of the Chicago Marine and Fire Insurance Company for the amount instead of sending its own certificate of deposite, and that the Chicago Marine and Fire Insurance Company is a separate and distinct corporation from the defendant.

The defendant, when it consented to receive the plaintiff's money, became debtor to the plaintiff therefor, and could not dis-

52 charge its obligation to the plaintiff by placing the money in the hands of any other institution without the knowledge and consent of the plaintiff. If the plaintiff accepted from the defendant the certificate of deposite of the Chicago Marine and Fire Insurance Co., sent him, knowing it to be the obligation of the insurance co., and not the obligation of the defendant, and, with knowledge of this fact, acquiesced in the act of the defendant and retained the certificate from March to December, the defendant would be discharged from all further liability.

But if the plaintiff accepted the certificate without such knowledge, and supposing that the certificate sent him was in fact the certificate of deposite of the defendant, and if the acts of the defendant were such as to allay all the suspicions which to the mind of a prudent business man might arise from the form of the certificate itself, that it was not the certificate of the defendant, then the defendant

53 would not be discharged from its liability to the plaintiff by sending such a certificate.

To this point alone the deposition of Mr. Fenno may be considered as evidence. It may be considered only for the purpose of showing what the plaintiff did when he received the certificate which was sent to him, what means he took to ascertain whether it was the obligation of the defendant or not, and whether those means were reasonably sufficient. For this purpose the deposition may be considered in connexion with the letters of the defendant to the plaintiff which have been read in evidence.

Upon the question of damages the court instructed the jury substantially as follows:

The plaintiff having waived all claim to the difference between the par or nominal value of the money paid to the defendant for the use of the plaintiff, and the value of New York exchange at that time in the same currency—that is, claiming only ninety-four cents on

54 the dollar of the amount thus paid—if the jury shall upon the evidence find the defendant liable to the plaintiff, they will assess the plaintiff's damages at ninety-four per cent. of the amount thus paid to the defendant for the use of the plaintiff, with interest thereon at six per cent. from the time the same was demanded. Unless the jury shall find from the evidence that there was an agreement between the parties that the money so paid to the defendant should be held by it at the risk of the plaintiff as to all depreciation therein, and in case the jury shall so find, then they will assess the plaintiff's damages at the value of the currency at the time of demand of payment, with interest on such value from the time of demand.

To all which the giving of said instructions on the part and behalf of said plaintiff, the defendant, by his counsel, then and there excepted, and prays that this his exceptions may be entered of record.

And inasmuch as the said several matters and things do not appear of record herein, the defendant prays that the said excep-
55 tions so taken as aforesaid to the said several matters aforesaid may be signed and sealed by the court, which is accordingly done.

In witness whereof, I have hereunto set my hand and seal, this 15th day of February, A. D. 1862.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed Feb. 15th, 1862.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the nineteenth day of February, A. D. 1862, the said defendant sued out the following writ of error, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court, before you, between Dudley C. Hall and against Marine Bank of Chicago, a mani-
56 fest error hath happened, to the great damage of the said Marine Bank of Chicago, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this nineteenth day of February, [L. S.] in the year of our Lord one thousand eight hundred and sixty-
57 two, and of our independence the 86th year.

WM. H. BRADLEY, *Clk.*

Endorsed: Filed Feb. 19, 1862.

WM. H. BRADLEY, *Clk.*

And afterwards, on the 24th day of February, A. D. 1862, the following citation was filed in the clerk's office, aforesaid, to wit:

UNITED STATES CIRCUIT COURT,
Northern District of Illinois, ss:

To Dudley C. Hall, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the Marine Bank of Chicago is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not
58 be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, presiding judge of said circuit court and district judge of said northern district of Illinois, this 24th day of February, in the year of our Lord eighteen hundred and sixty-two.

THOMAS DRUMMOND,
U. S. Judge.

I hereby accept service of the above, by copy, this 24th day of February, A. D. 1862.

SANFORD B. PERRY,
Att'y for Dudley C. Hall.

Endorsed: Filed Feb. 24, 1862.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 24th day of February, A. D. 1862, the following appeal bond was filed in the office of the clerk aforesaid, to wit:

Know all men by these presents, that we, the Marine Bank of Chicago, as principal, and J. Young Scammon and Franklin Scammon, as sureties, all of the city of Chicago, county of Cook and
59 State of Illinois, are held and firmly bound unto Dudley C. Hall in the sum of ten thousand dollars, to be paid the said Dudley C. Hall, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, firmly,

jointly and severally, by these presents. Sealed with our seals and dated this twentieth day of February in the year eighteen hundred and sixty-two.

Whereas the above-named Marine Bank of Chicago hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment entered in the circuit court of the United States for the northern district of Illinois, wherein the said Dudley C. Hall was plaintiff and the said Marine Bank of Chicago was defendant, at the December term, A. D. 1861, of the said circuit court, and which judgment was for the sum of six thousand five hundred and ninety-four and $\frac{48}{100}$ dollars, ($6,594 48,) besides costs of suit—

Now, therefore, the condition of this obligation is such that if the above-named Marine Bank of Chicago shall prosecute its said writ of error to effect, and answer all damages and costs if it shall
60 fail to make good its plea, then this obligation shall be void; otherwise be and remain in full force and effect.

J. YOUNG SCAMMON. [SEAL.]
F. SCAMMON. [SEAL.]
J. YOUNG SCAMMON, [SEAL.]
President of the Marine Bank of Chicago.
HAMILTON B. DOX. [SEAL.]
Cashier of the Marine Bank of Chicago.

Endorsed: Filed Feb. 24, 1862.

WM. H. BBADLEY, *Cl'k.*

61 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true and correct transcript of the record and proceedings had in the cause wherein Dudley C. Hall was plaintiff and the Marine Bank of Chicago the defendant, as the same appears from the records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office in Chicago, this 12th day of November, A. D. 1862, and of our independence the 87th year.

WM. H. BRADLEY, *Clerk.*

Assignment of errors.

62 THE MARINE BANK OF CHICAGO, pl'ff in error,
vs.
DUDLEY C. HALL, def't in error. } No. 271.

And now comes the said pl'ff in error and says, that in the record and proceedings aforesaid there is manifest error, in this:

1. That the court erred in permitting the deposition of J. Brooks Fenno to be read in evidence to the jury.

2. That the court erred in allowing the answers of the said J. Brooks Fenno to the 4th, 5th, and 6th interrogatories.

3. That the court erred in giving the several instructions for the p'ff below, above set out and excepted to.

By its att'y,

SAM'L W. FULLER.

Dec. 18, 1862.

63 UNITED STATES OF AMERICA:

In the Supreme Court of the United States, at the term thereof, A. D. 1862,

THE MARINE BANK OF CHICAGO, pl'f in error,
agt.
DUDLEY C. HALL, def't in error.

And hereupon, afterwards, to wit, on, &c., the said Dudley C. Hall, by his attorney, Sanford B. Perry, freely comes here into court, and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays the said Supreme Court of the United States, before the aforesaid justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed, &c.

SANFORD B. PERRY,
Att'y for Def't in error.

Filed Dec. 6, 1862.